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IN THE

Supreme Court of the United States

No. 809.

ROBERT F. KLEPINGER, MIRIAM KLEPINGER, AARON W. KLEPINGER, WARREN P. KLEPINGER AND GEORGE F. EVANSON, *Petitioners,*

v.

FRED B. RHODES, *Respondent.*

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF OF AMICI CURIAE.

LAWRENCE KOENIGSBERGER,
Chairman,

HUGH H. OBEAR,
PAUL B. CROMELIN,
JOHN J. CARMODY,
Committee of the Bar Association of the District of Columbia.

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BRIEF OF AMICI CURIAE.

I.

This brief is filed by Lawrence Koenigsberger, Hugh H. Obear, Paul B. Cromelin and John J. Carmody, constituting a committee of the Bar Association of the District of Columbia known as the Special Committee on Municipal Court Jurisdiction. It is authorized to take this action by resolution of the Board of Directors of said Association.

Consent to the filing of this brief by all parties to this proceeding, as provided by Rule 27 (Par. 9) of this Court, has been obtained and is filed herewith.

The matter involved in this application for writ of certiorari is one of great importance not only to the courts and the members of the Bar of the District of Columbia, but to the public as well. It presents grave questions of jurisdiction of the Municipal Court for the District of Columbia, the District Court of the United States for the District of Columbia, as well as appellate jurisdiction of the Municipal Court of Appeals for the District of Columbia, and the United States Court of Appeals for the District of Columbia. In this brief these courts will be called the Municipal Court, the District Court, the Municipal Court of Appeals and the Court of Appeals, respectively.

II.

The question presented is: Does the Municipal Court possess equity jurisdiction, and, if so, what is the extent of that equity jurisdiction?

On February 11, the United States Court of Appeals for the District of Columbia, handed down the decision in this case and held that the Municipal Court has jurisdiction of civil actions for the enforcement of equitable rights, where only personal property not exceeding $3,000 is involved. The action out of which this appeal had arisen was one for the establishment of a trust on a fund of $1980, or, in the alternative, for a money judgment.

The statute creating the present Municipal Court and prescribing its jurisdiction had been in force for almost two years, and there had been no prior decisions holding that it has equitable jurisdiction, except as to equitable defenses, under Code section 13-214. The decision was a surprise to many members of the Bar, as well as a cause of concern. It cast doubt on the validity of such judgments as may have been entered by the District Court since the effective date of the Municipal Court act in the class of cases now held to be within the jurisdiction of the Municipal Court—this by reason of the fact that except as to counterclaims and cross-claims, there is no area of concurrent jurisdiction of

the District Court and the Municipal Court, the jurisdiction of each court being exclusive within its limits; the decision was felt by many to be contrary to the legislative intent, and it left open to conjecture questions as to whether the Municipal Court could grant equitable relief, such as injunctions, specific performance, administration of trust estates, etc.

The question of whether the Municipal Court has jurisdiction of the enforcement of equitable rights had not been either briefed or argued before the Court of Appeals, the briefs and arguments having concerned themselves with other points considered by counsel in the case to be decisive of the action.

The petitioner, against whom the decision had been rendered, made no application for a rehearing, but on March 22 filed with this Court a petition for certiorari, which is now pending.

The opinion of the Court of Appeals in this case would seem to declare that insofar as the Municipal Court is concerned, the distinction between law and equity is wholly abolished both as to rights and remedies and that cases in which the claimed value of personal property or the debt or damages claimed, exclusive of interest, attorney's fees, protest fees and costs, does not exceed the sum of $3,000, which were formerly cognizant only in equity, are now within the exclusive jurisdiction of the Municipal Court. This result is reached by the Court of Appeals through an interpretation of the provisions of the Act of Congress of April 1, 1942, 56 Stat. 192, Ch. 207, D. C. Code 1940, Supp. II, Sec. 11-751 et seq.

The act of April 1, 1942 consolidated the then existing Municipal and Police courts. The Municipal Court has always been a court of limited jurisdiction. See Section 11-703 of the District of Columbia Code. The Court of Appeals had held that the Municipal Court had no equity jurisdiction. (*International Exchange Bank* v. *Pullo*, 52 App. D. C. 199, 285 Fed. 933; *Sambataro* v. *Caffo*, 57 App. D. C. 260, 20 F. (2d) 276.)

In consolidating the two courts Congress unmistakably legislated with this jurisdictional restriction clearly in mind. Section 11-755 of the D. C. Code (Supp. 1940) provides as follows:

> "The Court and each judge thereof shall have and exercise the same powers and jurisdiction as were heretofore had and exercised by the Police Court of the District of Columbia, or by the Municipal Court of the District of Columbia, or the judges thereof, on the effective date of this subchapter * * * "

The opinion of the Court of Appeals is based to a great extent on the fact that prior to the enactment of section 11-755 of the Code (Supp. II, 1940) the statute conferred upon the Municipal Court exclusive jurisdiction "in all civil cases in which the amount claimed to be due for debt or damages arising out of contracts, express or implied, or damages for wrongs or injuries to the person or property," whereas section 11-755 omits the expression "debts or damages arising out of contracts express or implied, or damages for wrongs or injuries to the person or property," and substitutes the expression "civil actions * * * in which the claimed value of personal property or the debt or damages claimed." The substitution of the expression "civil actions" for the former expression "civil cases" and the omission of reference to "contracts" and "wrongs or injuries," etc. is thought by the Court of Appeals to justify an imputation to Congress of an intention to confer equity jurisdiction on the Municipal Court.

It is submitted, with deference, that a detailed study of the legislative history of the Court leads to a different conclusion and indicates that nothing was intended except *to increase the monetary limit* of jurisdiction.

The Municipal Court was created by the Act of Congress of February 17, 1909 (35 Stat. 623) which converted what had theretofore been a justice-of-the-peace system into a Municipal Court, having the same jurisdiction as that theretofore exercised by the justices of the peace, with the

exception of an increase in the monetary jurisdiction from $300 to $500. The jurisdiction of the justices of the peace had been fixed by section 9 of the District of Columbia Code of 1901 (31 Stat. 1189), as follows:

> "Sec. 9. JURISDICTION.—The said justices of the peace shall have jurisdiction in all civil cases in which the amount claimed to be due for debt or damages arising out of contracts, express or implied, or damages for wrongs or injuries to persons or property, does not exceed three hundred dollars, including all proceedings by attachment or in replevin where the amount claimed or the value of the property involved does not exceed said sum, except in cases involving the title to real estate actions to recover damages for assault or assault and battery, or for malicious prosecution, or actions against justices of the peace or other officers for official misconduct, or actions for slander or libel, or actions on promises to marry; and said jurisdiction shall be exclusive when the amount claimed for debt or damages or the value of personal property claimed does not exceed fifty dollars, and concurrent with the said supreme court when it exceeds fifty dollars."

Subsequently, by section 1 of the Act of March 3, 1921 (41 Stat. 1310), the monetary limit of jurisdiction of the Municipal Court was increased to $1,000, the statute providing that the Court should have jurisdiction of the classes of cases over which it had had jurisdiction immediately prior to the passage of the Act, and also in actions for the recovery of damages for assault, assault and battery, slander, libel, malicious prosecution, and breach of promise to marry, that is to say it was given jurisdiction over certain classes of cases which had been expressly excluded from the jurisdiction of justices of the peace by Section 9 of the 1901 Code, and from the jurisdiction of the Municipal Court by the Act of 1909, which had restricted the jurisdiction of the Municipal Court to the same classes of cases as those theretofore within the jurisdiction of the justices of the peace.

When the act creating the new Municipal Court was passed, there was no need expressly to include actions for assault, assault and battery, etc., as their exclusion from the jurisdiction of the old Municipal Court had been revoked by the Act of 1921, in consequence of which, at the time of the passage of the Act of 1942 (D. C. Code 1940 Supp. II, sec. 11-755), the Municipal Court had jurisdiction of all actions commonly denominated as law actions. In drafting the act, it was therefore unnecessary to enumerate the various kinds of law actions of which the new Court was to have jurisdiction. It was sufficient merely to provide, as was provided, that the jurisdiction should continue as theretofore, and in order to increase the monetary limit of jurisdiction there was added the provision that the Court should have jurisdiction of civil actions where the amount claimed was not in excess of $3,000. In the light of this historical background of the Court, and the fact that the Court of Appeals had held, as above indicated, that the Municipal Court had no jurisdiction of equitable actions, notwithstanding it had jurisdiction of equitable defenses, it would seem to be apparent that the only purpose of the Act of 1942, as far as increase of jurisdiction was concerned, was to increase the jurisdiction of the Municipal Court as to the *amount* but not as to the kinds of actions. Otherwise, it is reasonable to suppose that some further provisions would have been incorporated into the act effecting the merger, outlining the extent of the Court's jurisdiction, and providing for injunctions, etc., and methods for enforcing its decrees, such as is found in the statute conferring such power on the District Court as an equity court (D. C. Code, sec. 11-326).

In further support of this position, there is printed as an appendix hereto a statement made by the Honorable D. Lawrence Groner, Chief Justice of the Court of Appeals when testifying on July 31, 1941, before the House Committee to which the bill had been referred. It will be noted that the first objective which he mentioned was to increase the jurisdiction (of the new Court), *in amount*, and nowhere

did he or any other witness indicate that included among the objectives of the bill was any other enlargement of the jurisdiction of the Municipal Court including conferring equity jurisdiction on the Municipal Court.

This interpretation is further fortified by the provisions of section 11-756 of D. C. Code, Supp. II, which provide for certification by the District Court to the Municipal Court of cases involving less than $3,000. Under that section, if the action in the District Court is one requiring the Court to grant equitable relief, the District Court has no authority to certify the case to the Municipal Court for trial. If Congress had intended to vest equitable jurisdiction in the Municipal Court the exception regarding cases involving equitable relief would have been meaningless. Even if there were an ambiguity in section 11-755, (reading it alone) it seems indisputable that the intention of Congress is clearly reflected in section 11-756. If it was intended to vest the Municipal Court with the power to grant equitable relief within its jurisdictional amount, there was no need for the exception in Section 11-756.

Moreover under the provisions of Section 11-756 (c) the only power of the Municipal Court to punish for contempt is by a fine not exceeding $50.00, or imprisonment not exceeding thirty days. If it were intended to vest the Court with equitable jurisdiction, would such a provision have been inserted in the Act? If, for example, in an injunction proceeding involving $3,000 the defendant openly flouts the Court's order, would it be reasonable to suppose that the Court was limited in punishing the defendant for contempt of Court by a nominal fine of $50 or a short jail sentence? It should also be noted that the power to punish is in the disjunctive, by fine *or* imprisonment.

As was said by the Court of Appeals in *International Exchange Bank* v. *Pullo*, 52 App. D. C., 199, 285 Fed. 933, in discussing the question of whether the statute there under consideration gave the Municipal Court jurisdiction of equitable defenses.

> "If Congress had intended to effect so radical a change in the jurisdiction of that court, it is reasonable to believe that the purpose would be expressed in more specific terms * * * "

It is to be observed that *the District Court and the Municipal Court do not have any concurrent jurisdiction. Jurisdiction is mutually exclusive.* If the Municipal Court has the equity jurisdiction, as herein discussed, then the District Court has not such jurisdiction.

Not only does the opinion of the Court of Appeals appear to be contrary to the clear intent of Congress, but it fails to clarify or state the precise boundaries of such equitable jurisdiction as it does find that the Municipal Court possesses. The language of the opinion leaves open for future consideration and litigation the question of how far this equitable jurisdiction extends. Does, it for example, extend in suits for divorce which while strictly speaking are not equity suits are civil actions and have heretofore been within the equity jurisdiction of the District Court. (D. C. Code Sec. 11-325) And apart from the question of equitable rights, does the Municipal Court have power also to grant equitable remedies, such as prohibitory injunctions, mandatory injunctions, specific performance, reformation of contracts and the like? These questions are left undetermined by the opinion. (See *Rowe* v. *Nolan Finance Company*, decided by U. S. Court of Appeals, District of Columbia, April 10, 1944.) This creates a situation which is dangerous to the rights of litigants who may find themselves barred by the statute of limitations from going to the right court after it has been determined that they have originally proceeded in the wrong court—and, even more important than that there may be many cases in which there will be doubt as to the validity of the judgment, since the judgment rendered by a court having no jurisdiction the subject matter is void for all purposes, and may be collaterally attacked.

The doubts and dangers which the opinion creates are very real—the difficulties obvious.

Since appeals from the Municipal Court are taken to the Municipal Court of Appeals, with limited and discretionary right of review of the decisions of that Court by the Court of Appeals (Sec. 11-773 D. C. Code, Supp. II)—and appeals from the District Court go to the Court of Appeals, it is apparent that the appellate jurisdiction of each of these courts is likewise involved.

III.

It is respectfully submitted that because of the importance of the questions involved the petition for writ of certiorari should be granted.

LAWRENCE KOENIGSBERGER,
Chairman,
HUGH H. OBEAR,
PAUL B. CROMELIN,
JOHN J. CARMODY,
Committee of the Bar Association of the District of Columbia.

APPENDIX.

July 31, 1941, statement of Hon. D. Lawrence Groner, Chief Justice, United States Court of Appeals for the District of Columbia on hearing on consolidation of the District of Columbia courts (page 3)—

"When the matter of some legislation looking to the improvement of conditions in the Municipal Court and the Police Court was first discussed with the Department of Justice, the objective was, I think I might say, threefold. There were three objectives which the department had in mind, all of which I thoroughly sympathized with.

One objective was to increase the jurisdiction, in amount, of the new court to be established by the consolidation of the two present courts, and the purposes of that are twofold, first, to provide speedier trial and the determination to litigants in local controversies involving not to exceed $3,000.

By the *increase in the amount of jurisdiction* which the new court would have it is believed that a great many cases which now necessarily are brought in the United States District Court would be brought in the new court.

The United States District Court here is, I think I may correctly say, perhaps the busiest United States District Court in the entire Federal system not excluding New York. In the number of cases and the importance and in the Federal aspect of cases that court has a most unusual burden.

There are 12 judges of that Court, and they work, I think, as consistently and as steadily as judges can reasonably be expected to work. But notwithstanding that, it has been necessary to bring in judges from the outside to assist the District Court judges in the disposition of their calendars. This summer, for instance, more than six judges from the outside have helped that Court in the trial of cases.

It was also thought that by increasing that jurisdiction the cost of litigation to the citizen would be materially reduced because, in the very nature of things, under the rules which obtain in the District Courts of the United States, the actual expense of trying a case

is greater in the United States District Court than it would be in the newly created Municipal Court. That was the first objective.

The second objective was to provide some means whereby the power of the court could be utilized to the fullest extent by the addition of one judge, with a provision for an additional judge who would have the supervisory control of the administration of justice and the conduct of business in that court, and the thought in connection with that was that some things which had been the subject of severe criticism could be avoided in the future. * * *

The third objective was to provide an appeal by right to litigants in these cases. At one time there was an appeal to the United States District Court. That court is one year and four months behind in its work and has been for a long time.

MR. MCGEHEE: The purpose in providing for an intermediate court of appeals is to relieve the United States Court to some extent, as I understand it.

CHIEF JUSTICE GRONER: It is to relieve the United States District Court and to enable it to become current with its docket without the appointment of additional judges. * * *'' (Italics supplied.)